

AMENDED IN ASSEMBLY FEBRUARY 23, 2010

AMENDED IN ASSEMBLY JULY 6, 2009

AMENDED IN SENATE MAY 28, 2009

AMENDED IN SENATE MAY 20, 2009

SENATE BILL

No. 362

Introduced by Senator Florez

February 25, 2009

~~An act to amend Section 62722 of the Food and Agricultural Code, relating to milk.~~ *An act to add Section 23356.4 to the Business and Professions Code, to add Section 47060 to the Food and Agricultural Code, and to add Sections 6075.5, 6363.9, 17158, 24316, and 32177.7 to the Revenue and Taxation Code, relating to agriculture.*

LEGISLATIVE COUNSEL'S DIGEST

SB 362, as amended, Florez. ~~Milk pooling: exemptions. Agriculture: victory gardens and microvintners: taxes: exemptions.~~

Existing law provides for the direct marketing of agricultural produce, including through certified farmers' markets, field retail stands, or farm stands, subject to specified conditions.

This bill would authorize a victory garden grower, as defined, that files a notice with, and pays a \$50 filing fee to, the county agricultural commissioner to sell fruits, nuts, or vegetables that he or she grows in his or her garden directly to the public, including at a farmers' market, or to a retailer or distributor or others, within a 15-mile radius from the garden. The license would be effective upon the filing of the notice and payment of the fee and would be renewable annually. A licensed victory garden grower would be exempt from certain state laws and local ordinances, as specified. Because this bill would impose new

duties on local agencies, the bill would impose a state-mandated local program.

A violation of any of these provisions would be a misdemeanor. Because this bill would create a new crime, it would impose a state-mandated local program.

The Alcoholic Beverage Control Act contains various provisions regulating the application for, the issuance of, the suspension of, and the conditions imposed upon, alcoholic beverage licenses by the Department of Alcoholic Beverage Control.

This bill would authorize the issuance of an alcoholic beverage license to a victory microvintner, as defined, authorizing the licensee to engage in the manufacture and sale of wine using victory garden grapes, subject to specified conditions.

The Alcoholic Beverage Control Act provides that a violation of its provisions is a misdemeanor, unless otherwise specified. Because this bill would create new crimes, the bill would impose a state-mandated local program.

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible property sold at retail in this state, or the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, and requires every person desiring to engage in or conduct business as a seller within this state to obtain a seller's permit from the State Board of Equalization. That law provides various exemptions from those taxes. The Personal Income Tax Law and the Corporation Tax Law provide for various exclusions from gross income for the purposes of the taxes imposed by those laws. The Alcoholic Beverage Tax Law imposes an excise tax, at specified rates, for the privilege of selling or possessing for sale, beer, wine, sparkling wine, sparkling cider, and distilled spirits. Existing law authorizes cities and counties to license businesses within their jurisdictions.

This bill would exempt from sales and use taxes the sale of, or storage, use, or other consumption of, wine sold by a licensed victory microvintner pursuant to that license, and would exempt the licensee from the requirement to obtain a seller's permit or business license or other state and local licenses and permits. This bill would, for purposes of computing personal income and corporation taxes, exclude from gross income any amounts received from the sale of wine made pursuant to the license by a licensed victory microvintner or from the sale of fruits, nuts, or vegetables grown by a licensed victory garden grower

pursuant to the license. This bill would also exempt from the alcoholic beverage excise tax the sale of that wine by a licensed victory microvintner.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and the Transactions and Use Tax Law authorizes districts, as specified, to impose transactions and use taxes in conformity with the Sales and Use Tax Law. Amendments to the Sales and Use Tax Law relating to sales and use taxes, not inconsistent with these laws, are incorporated into ordinances imposing these taxes. Existing law requires the state to reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that no appropriation is made and the state shall not reimburse cities and counties for sales and use tax revenues lost by them pursuant to this bill.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~Existing law, the Gonsalves Milk Pooling Act (the act), provides for equalization pools and milk pooling to govern the production and distribution of fluid milk and fluid cream. The act authorizes the Secretary of Food and Agriculture to develop a pooling plan, with specified items required to be included in the pooling plan, under which producers of milk are assigned a pool quota that determines the amount of class 1 milk the producer can sell to handlers within the pooling system and the prices to be paid by handlers to producers.~~

~~The act provides that producers of certified milk or guaranteed raw milk have the option, at the time of the adoption of the initial pooling plan, to be subject to the plan or to be excluded from the plan.~~

~~This bill would provide that a dairy farm that existed on July 1, 2009, may, on or after January 1, 2010, elect to be excluded from the pooling plan if that dairy farm produces and processes fluid milk, and processes~~

~~no more than 1,500 gallons of fluid milk produced by that dairy farm per day, as specified. The bill would make conforming and technical changes.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 23356.4 is added to the Business and
2 Professions Code, to read:
3 23356.4. (a) (1) Notwithstanding any other provision of this
4 division, the department may issue an alcoholic beverage license
5 to a victory microvintner pursuant to this section.
6 (2) For purposes of this section, a “victory microvintner” means
7 a person that makes wine obtained from grapes or other
8 agricultural products, but only if 75 percent or more of the grapes
9 or other agricultural products are grown by a victory garden
10 grower, as described in Section 47060 of the Food and Agricultural
11 Code. If the person is an individual or a partnership in which one
12 or more persons are individuals, those individuals shall be over
13 21 years of age.
14 (b) A license issued pursuant to this section shall authorize the
15 licensee to do any of the following:
16 (1) Engage in the manufacture of wine. The aggregate amount
17 of wine made per calendar year shall not exceed 200 gallons.
18 (2) Notwithstanding any other provision of this division, engage
19 in the sale of wine to authorized licensees or customers located
20 within a 15-mile radius of the victory microvintner’s licensed
21 premises, including sales to authorized licensees or customers at
22 farmers’ markets. A victory microvintner, or a retail licensee that
23 is not a victory microvintner, may directly offer samples of the
24 victory microvintner’s wine at a farmers’ market operating within
25 a 15-mile radius of either the victory microvintner’s licensed
26 premises or the victory garden that provides the grapes for the
27 victory microvintner’s wine.
28 (c) All applicable labeling requirements, including, but not
29 limited to, the provisions of Article 3 (commencing with Section
30 25235) of Chapter 13, shall apply to wine produced by a licensed
31 victory microvintner. No additional label statement shall be
32 required respecting the 15-mile sale radius applicable to a

1 particular victory microvintner. However, a victory microvintner
2 may add the phrase “Microvintner,” “Victory Microvintner,”
3 “California Microvintner,” or “California Victory Microvintner”
4 to the wine label, and, if such additional designation is added by
5 the victory microvintner, an optional additional geographic
6 statement of origin that reasonably identifies, with customary
7 publicly recognized names, the neighborhood or microlocality of
8 the victory garden from which the wine was made. Any such
9 neighborhood or microlocality shall conform reasonably closely
10 with the 15-mile radius sale area applicable to the victory
11 microvintner as provided in this section.

12 (d) A licensed victory microvintner, or a retail licensee that is
13 not a victory microvintner, may conduct wine tastings on the
14 licensed premises of a victory microvintner. These tastings, if
15 conducted directly by a licensed victory microvintner, shall include
16 only wines produced by that victory microvintner and by other
17 victory microvintners located within the 15-mile radius of the
18 licensed premises where the tasting is conducted.

19 (e) If a license is issued pursuant to this section to a person who
20 is a taxpayer, as defined in Section 32005 of the Revenue and
21 Taxation Code, that person shall also be deemed to be the taxpayer
22 and file an appropriate bond for purposes of Part 14 (commencing
23 with Section 32001) of Division 2 of the Revenue and Taxation
24 Code.

25 (f) (1) A licensed victory microvintner shall be exempt from
26 any state law and local county and city ordinance that requires a
27 license or permit to conduct the activities of a victory microvintner,
28 or that prohibits those activities, including, but not limited to, local
29 zoning and business license ordinances. However, a licensed
30 victory microvintner shall be subject to all other applicable state
31 and local laws relating to, but not limited to, health and safety,
32 noise, and prohibited poisons.

33 (2) The Legislature finds and declares that the encouragement
34 and development of local microvintners to serve their communities
35 is a matter of statewide interest and concern. It is, therefore, the
36 intent of the Legislature that this section shall supersede all
37 conflicting local laws and shall apply in charter cities.

38 SEC. 2. Section 47060 is added to the Food and Agricultural
39 Code, to read:

1 47060. (a) Notwithstanding any other law, a person licensed
2 as a victory garden grower may, within a 15-mile radius from the
3 garden, sell fresh fruits, nuts, or vegetables that he or she grows
4 in his or her garden directly to the public, including at a farmers'
5 market, or to a retailer or distributor or others, including, but not
6 limited to, a grocer, market, school, or restaurant.

7 (b) For purposes of this section, a "victory garden grower"
8 means a person in this state who owns or leases a garden of a
9 reasonable size, not exceeding one acre in size, and grows fruits,
10 nuts, or vegetables, or any combination of these foods, in that
11 garden. The county agricultural commissioner may determine
12 rules or guidelines of general applicability addressing what is a
13 reasonable size in his or her county under the circumstances.
14 However, no victory garden grower shall be required to obtain
15 the permission of the county agricultural commissioner as a
16 condition of obtaining or maintaining a victory garden grower
17 license, except for the notice and fee as provided in subdivision
18 (c).

19 (c) (1) In order to be licensed as a victory garden grower, the
20 grower shall file a notice, not exceeding one page in length, and
21 otherwise in a form as prescribed by the county agricultural
22 commissioner, along with a fifty-dollar (\$50) filing fee, with the
23 county agricultural commissioner in the county in which the garden
24 is located. The license shall be effective upon the filing of the notice
25 and payment of the fee, and may be renewed annually by filing
26 another notice and paying the fifty-dollar (\$50) filing fee.

27 (2) A photocopy of the notice, along with proof of payment of
28 the filing fee, which can be a photocopy of a check or money order
29 or other payment form, shall be prima facie evidence of the victory
30 garden grower's licenseholder status pursuant to this section, and
31 all persons shall be entitled to rely on that evidence. However, a
32 county agricultural commissioner may choose to issue, from time
33 to time, receipts or certificates evidencing the victory garden
34 grower's licenseholder status, and that receipt or certificate, if
35 and when issued, shall also be prima facie evidence of the victory
36 garden grower's licenseholder status pursuant to this section.

37 (d) (1) A licensed victory garden grower shall be exempt from
38 any state law and local county and city ordinance that requires a
39 license or permit to conduct the activities of a victory garden
40 grower, or that prohibits these activities, including, but not limited

1 to, local zoning and business license ordinances. However, except
2 as provided in subdivision (e), a licensed victory garden grower
3 shall be subject to all other applicable state and local laws relating
4 to, but not limited to, health and safety, noise, and prohibited
5 poisons.

6 (2) The Legislature finds and declares that the encouragement
7 and development of community-based food gardens to serve their
8 local communities with locally grown foods is a matter of statewide
9 interest and concern. It is, therefore, the intent of the Legislature
10 that this section shall supersede all conflicting local laws and shall
11 apply in charter cities.

12 (e) The agricultural produce sold by a licensed victory garden
13 grower shall be exempt from size, standard pack, container, and
14 labeling requirements of state law. However, a county agricultural
15 commissioner may issue regulations or guidelines of general
16 applicability providing for point-of-sale identification of the
17 produce of a county's victory garden grower as "____ County
18 Victory Garden Produce" or "Victory Garden produce of ____
19 County," or similar wording, and the identification regulations
20 or guidelines shall not impose any material or unreasonable cost
21 or burden upon a victory garden grower. In addition to the
22 identification, a victory garden grower may add an optional
23 additional geographic statement of origin for any victory garden
24 produce, which reasonably identifies, with customary publicly
25 recognized names, the neighborhood or microlocality of the victory
26 garden. Any such neighborhood or microlocality shall conform
27 reasonably closely with the 15-mile radius sale area applicable
28 to the victory garden grower as provided in this section.

29 SEC. 3. Section 6075.5 is added to the Revenue and Taxation
30 Code, to read:

31 6075.5. No permit shall be required under this part of any
32 person that engages in business in this state as a victory
33 microvintner issued a license pursuant to Section 23356.4 of the
34 Business and Professions Code, and who engages in no other
35 taxable sales of tangible personal property at retail.

36 SEC. 4. Section 6363.9 is added to the Revenue and Taxation
37 Code, to read:

38 6363.9. There are exempted from the taxes imposed by this
39 part, the gross receipts from the sale in this state of, and the
40 storage, use, or other consumption in this state of, wine made

1 *pursuant to the license by a person licensed pursuant to Section*
2 *23356.4 of the Business and Professions Code, that sells or stores,*
3 *uses, or otherwise consumes that wine.*

4 *SEC. 5. Section 17158 is added to the Revenue and Taxation*
5 *Code, to read:*

6 *17158. Gross income shall not include any amount received*
7 *during the taxable year by a person licensed pursuant to Section*
8 *23356.4 of the Business and Professions Code from the sale of*
9 *wine made pursuant to the license, or by a person licensed pursuant*
10 *to Section 47060 of the Food and Agricultural Code from the sale*
11 *of fruits, nuts, or vegetables grown pursuant to the license.*

12 *SEC. 6. Section 24316 is added to the Revenue and Taxation*
13 *Code, to read:*

14 *24316. Gross income shall not include any amount received*
15 *during the taxable year by a person licensed pursuant to Section*
16 *23356.4 of the Business and Professions Code from the sale of*
17 *wine made pursuant to the license, or by a person licensed pursuant*
18 *to Section 47060 of the Food and Agricultural Code from the sale*
19 *of fruits, nuts, or vegetables grown pursuant to the license.*

20 *SEC. 7. Section 32177.7 is added to the Revenue and Taxation*
21 *Code, to read:*

22 *32177.7. No tax shall be imposed by this part upon any wine*
23 *sold by a person licensed pursuant to Section 23356.4 of the*
24 *Business and Professions Code pursuant to the license.*

25 *SEC. 8. Notwithstanding Section 2230 of the Revenue and*
26 *Taxation Code, no appropriation is made by this act and the state*
27 *shall not reimburse any local agency for any sales and use tax*
28 *revenues lost by it under this act.*

29 *SEC. 9. No reimbursement is required by this act pursuant to*
30 *Section 6 of Article XIII B of the California Constitution for certain*
31 *costs that may be incurred by a local agency or school district*
32 *because, in that regard, this act creates a new crime or infraction,*
33 *eliminates a crime or infraction, or changes the penalty for a crime*
34 *or infraction, within the meaning of Section 17556 of the*
35 *Government Code, or changes the definition of a crime within the*
36 *meaning of Section 6 of Article XIII B of the California*
37 *Constitution.*

38 *However, if the Commission on State Mandates determines that*
39 *this act contains other costs mandated by the state, reimbursement*
40 *to local agencies and school districts for those costs shall be made*

pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SECTION 1. ~~Section 62722 of the Food and Agricultural Code is amended to read:~~

~~62722. Pooling plans shall not apply to the production of goats milk or producer handlers who produce and sell less than 500 gallons of fluid milk used for class 1 purposes per day unless they specifically request entry into the pool at the time of the adoption of the initial pooling plan for that area. A producer of certified milk or guaranteed raw milk shall have the option, at the time of the adoption of the initial pooling plan under this chapter, to be subject to the plan, and accordingly to have a production base and pool quota established for the producer, or to be excluded from the plan. On or after January 1, 2010, a dairy farm, that existed on July 1, 2009, that produces and processes fluid milk used for class 1 purposes, and that processes no more than 1,500 gallons of fluid milk per day that the dairy farm produced, may elect to be excluded from the pool if that dairy farm is current with the pool. For purposes of this section, "dairy farm that produces and processes fluid milk for class 1 purposes" means a vertically integrated operation that includes a dairy farm and processing plant owned and operated by the same entity that produces fluid milk used for class 1 purposes, to be sold to the consumer.~~

~~(a) Any such producer of less than 1,500 gallons of fluid milk for class 1 purposes per day, electing to be excluded from the plan, may at any later time be admitted to the pool, but with only the production base and pool quota to which the producer would have originally been entitled or the producer's existing production and average daily class 1 usage during the 12 months preceding the producer's entry into the pool, whichever is less.~~

~~(b) Any producer claiming exemptions from the provision of any pooling plan by reason of the provisions of Section 62708, 62708.1, or this section, who loses his or her exemption by failure to meet the requirements for exemptions set forth in those sections shall automatically be deemed to have applied for and become a part of a producer pool on September 1st following any year ended August 31st during which the secretary determines the producer is no longer entitled to exemption, and the producer's admittance~~

- 1 ~~into such a pool shall be on the basis of the production base and~~
- 2 ~~pool quota calculations as set forth in those sections.~~